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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,713	02/27/2004	Colette Seyfried	23-0382	9617
40158	7590	05/05/2005	EXAMINER	
LEONARD & PROEHL, PROF. L.L.C. 3500 SOUTH FIRST AVENUE CIRCLE SUITE 250 SIOUX FALLS, SD 57105			HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/789,713	SEYFRIED, COLETTE
	Examiner	Art Unit
	Gloria Hale	3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 2-23-05 Amendment.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,5-8 and 10-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,5-8 and 10-16 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 6, 10 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The snap and hook and loop components as seen in figures 3 and 4 and claimed in claims 6, 10 and 13 have not been clearly described. It is not clear as to how the single component of a snap fastener mate with the garment when the garment has not been claimed as including the complementary fastener component. A fastening component on the apparel was not previously disclosed.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6, 10 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are not clear for the same reasons as discussed above.

However, the claims, as best understood have been examined on their merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,6,7,8,11 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Smart (US 4,825,475).

Smart discloses a retaining device of a round, flexible band conformable around an extremity of a user including engagement means clip or compression. The band is linear and elongated like a snake as broadly claimed and includes an interior surface and an exterior surface. Smart also discloses an interior pocket, which selectively retains an accessory, the clip. The band is wearable on a wearer over their clothing, under their clothing or directly on their skin surface as desired.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3,5,10, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smart (US 4,825,475) in view of Tomlinson et al(US 5,794,769).

Smart discloses the invention substantially as claimed except for the indicia as claimed in claim 3, the illumination member as claimed in claim 5, as further including a storage pocket, and the organic snake like linear elongated shape as claimed in claims 10 and 12 and as being encompassed around a sleeve cuff as in claim 16. Tomlinson et al discloses a retaining device with indicia, illumination members (col. 7, lines 23-29) and a storage type pocket (15, as seen in figure1A and col. 4, line 6).

Claims 1,2,6-8 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breslow (US 2,691,172) in view of Kalomeris (US 4,525,879). Breslow discloses a retaining device and the method of providing such a device comprising a flexible band in an organic form with engagement means including 9 and 11, the friction gripping means and clasps, as seen in figure 1 in addition to mechanical compression about the wearer. However, Breslow does not specifically include a pocket on an interior surface for retaining an accessory with the pocket having an open side spaced from an edge of the flexible band. Kalomeris discloses a pocket 40 with an opening 56 and closure means 60 (See Kalomeris, col. 5, lines 4-23 and figures 1-3). The belt is "round" with interior and exterior surfaces as claimed. Accordingly it would have been obvious to modify the flexible band of Breslow with the teaching of Kalomeris to include a pocket therein as disclosed by Kalomeris to store items therein as desired.

Claims 3, 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breslow (US 2,691,172) in view of Kalomeris (US 4,525,879) and further in view of Tomlinson (US 5,794,769).

Breslow and Kalomeris discloses the invention substantially as claimed.

However, They do not disclose the indicia and illumination members as claimed.

Tomlinson discloses the indicia and illumination means as claimed (See Tomlinson, col. 7,lines 23-29).

Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Breslow and Kalomeris to include decorative indicia and illumination means as a design expedient in order to provide a desired aesthetic effect.

Response to Arguments

Applicant's arguments filed 2-23-05 have been fully considered but they are not persuasive. The applicant's representative is arguing more than what has been claimed. The narrow interpretation of the term "Accessory" is incorrect. The pocket of Smart holds an accessory, the hook as broadly claimed. The pocket opening is spaced away from the edge as claimed. Additionally the claims read on well known money belts with hidden interior pockets and also having a rubber or hook means for retention to the garment on the inside as seen in the new rejection..

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gloria Hale
Primary Examiner
Art Unit 3765
